THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MINDY LAUER,

Plaintiff,

v.

LONGEVITY MEDICAL CLINIC PLLC, et al.,

Defendants.

CASE NO. C13-0860 JCC

ORDER GRANTING MOTIONS TO ENFORCE FEE AGREEMENT AND SEAL

This matter comes before the Court on the Blankenship Law Firm's motions to enforce the BLF fee agreement (Dkt. No. 71) and seal certain exhibits (Dkt. No. 73). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motions for the reasons explained herein.

I. BACKGROUND

In late May 2012, Mindy Lauer retained the Blankenship Law Firm (BLF) to represent her in an employment dispute. (Dkt. No. 98 at 2–3.) Lauer was only seeking $5,514 in back pay, (Dkt. No. 72 at 8), although she also sought emotional distress and punitive damages. (Dkt. No. 1 at 12.) Lauer personally met with Scott Blankenship, who informed her that he would represent her on a contingent fee basis. (*Id.*) Lauer signed an Agreement for Legal Services which, in Paragraph 1, explained BLF's policy regarding attorney fees as follows:

> In the event of a recovery from a settlement or a judgment, Attorneys shall receive either 1) forty percent (40%) of all sums recovered or saved by settlement or judgment including a supplemental judgment with attorneys fees plus interest or 2) all hourly fees incurred up to the amount of all sums recovered and saved, *whichever amount is greater.*

(Dkt. No. 72-1 at 5, 9 (emphasis added).) Paragraph 1 of the Agreement also listed BLF's current hourly rates. (*Id.*) In Paragraph 3, the Agreement explained BLF's policy regarding costs as follows:

> Client understands that there will be costs in addition to Attorney's fees and Client shall pay all such litigation expenses. Litigation expenses may include, but are not limited to, filing fees, service fees, witness fees, expert investigation, mediator's fees, medical records, photocopies, long distance charges, court reporter and videographer fees for depositions, and any other out-of-pocket costs related to litigating your case. All such costs are the responsibility of our clients and are to be paid on a regular basis. Statements will be mailed to Client indicating costs incurred within a reasonable period upon the client's request.

(Dkt. No. 72-1 at 6.) Lauer was sent regular invoices notifying her of the costs BLF accrued over the course of the litigation. (Dkt. No. 98-1 at 14.)

Litigation continued for three years. After the parties' first mediation on August 14, 2014, Defendant Longevity made a settlement offer for $10,000, which Lauer rejected. (Dkt. No. 98 at 5; Dkt. No. 72 at 12.) In March 2015, Longevity made an offer of judgment for $150,000 including attorney fees and costs. (*Id.* at 6.) Blankenship advised Lauer to reject this offer, as the firm's fees were already greater than this amount. (*Id.*; Dkt. No. 72-2 at 180.) In response, Lauer informed BLF that "My thoughts would be $50-100,000 + attorney fees for a settlement." (Dkt. No. 172-2 at 179.) BLF then declined Longevity's offer on Lauer's behalf. (*Id.* at 179.)

A second mediation was scheduled for April 1, 2015. (Dkt. No. 72-2 at 186.) Before the mediation, Blankenship emailed Lauer, confirming that she "gave [BLF] authority to settle within $50,000 to $100,000 for you." (*Id.* at 184.) He also reminded her that she had over $16,000 in outstanding costs. (*Id.*) Lauer did not object to either of these points. (*Id.*) Lauer was also provided with a copy of BLF's fees to date, which totaled [redacted]. (Dkt. No. 98 at 6.) The mediator made a blind offer of settlement for [redacted].

(Dkt. No. 75 at 4.) By April 9th, both parties had accepted the offer. (*Id.*) [redacted]

Lauer initially appeared pleased that Longevity had agreed to the settlement. (Dkt. No. 72-2 at 193) ("Thank you Scott for texting me! I'll go home & read my email. Sorry you have all of this on your vacation."). However, she was reluctant to sign the [redacted] until BLF negotiated its fees. (Dkt. No. 98 at 8; Dkt. No. 72-2 at 213–214.) After a number of contentious emails, Lauer signed [redacted] on June 16th. (Dkt. No. 90 at 6.) But she was explicit that she was not authorizing BLF's requested attorney fees, (Dkt. No. 72-2 at 213), and continued to insist that BLF reduce its bill. (Dkt. No. 72-2 at 224–236.) BLF appears to have repeatedly called Lauer in an attempt to resolve the dispute, but she did not return its calls and only responded via email. (Dkt. No. 72-2 at 229) ("I would rather have had the ability to speak with you, but you have not called my office despite our requests to speak with you, and despite my office trying to call you several times."). Her sole offer was that she and BLF split the settlement "50/50." (*Id.* at 226.)

BLF now moves the Court to grant its fee of [redacted] and costs of [redacted], for a total of [redacted]. (Dkt. No. 89 at 43–44.) Because the total settlement amount was [redacted], this would appear to leave Lauer with [redacted] (including undisputed funds already distributed to her). (Dkt. No. 88 at 2; Dkt. No. 89 at 1) (addressing the distribution of undisputed funds). Lauer argues that BLF's fees are unreasonable and the Fee Agreement violates the Washington Rules of Professional Conduct (RPC).

II. DISCUSSION

A. BLF's Fees and Costs Are Reasonable

In attorney fee disputes involving state law claims, district courts must apply state law so

long as it "does not run counter to a valid federal statute or rule of court." *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1281 (9th Cir. 1999) (internal quotation marks omitted). Because there is no indication of such a conflict here, the Court will apply Washington state law to this dispute. *See* LCR 83.3(a)(2) (providing for the application of the Washington Rules of Professional Conduct). Fee agreements that violate the RPC are against public policy and will not be enforced. *Belli v. Shaw*, 98 Wash. 2d 569, 578 (1983). RPC 1.5 provides that "[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount of expenses." The reasonableness standard applies to contingent fees as well. RPC 1.5, Comment 3.

Under Washington law, courts apply the lodestar method to determine reasonable fees and costs. *Mahler v. Szucs*, 135 Wash. 2d 398, 433 (1998) *overruled on other grounds by Safeco Insurance Co. v. Woodley,* 150 Wash.2d 765 (2004). The lodestar method requires the party seeking fees to bear the burden of proving that its hourly rates and hours expended were reasonable. *Id.* at 434. Once these amounts are multiplied, the total may be adjusted in a court's discretion. *Id.* "This methodology can be supplemented by an analysis of the factors set forth in RPC 1.5(a) which guide members of the Bar as to the reasonableness of a fee." *Id.* at 433 n.20.[1]

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[1] These factors are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent; and (9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

The hourly rates for BLF's attorneys and staff range from $150 to $500. (Dkt. No. 76 at 41.) Lauer does not meaningfully contest any of these rates. "[W]hen determining a reasonable hourly rate, the relevant community is the forum in which the district court sits." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) "Where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable rate." *Bowers v. Transamerica Title Ins. Co.*, 100 Wash. 2d 581, 597 (1983). A district court may also rely "on its own knowledge and experience" in determining the reasonableness of an hourly rate. *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011). Blankenship attests that BLF charged Lauer its established rates. (Dkt. No. 72 at 20.) Several local employment lawyers testify that Blankenship's $500 hourly rate is reasonable for Seattle given his skill and experience. (Dkt. No. 72-2 at 26–28, 37). The Court has reviewed BLF's rates and finds them to be reasonable. (Dkt. No. 72 at 20–26.)

BLF billed a total of [redacted] hours in this case from when it began in May 2012 until July 2015 when it was dismissed. (Dkt. No. 76 at 2, 41.) Lauer argues that this was excessive. But Lauer does not point to any allegedly excessive time entries in particular. Lauer does reference *Conti v. Corporate Services Group, Inc.*, in which the defendants disputed BLF's fees following a jury trial. 30 F. Supp. 1051, 1059 (W.D.W. 2014).[2] In *Conti*, Judge Jones held that BLF's hours were excessive because BLF litigated that case inefficiently, included non-compensable hours in its billing record, and had limited success. 30 F. Supp. 1051, 1080–84 (W.D.W. 2014). But that was a different matter entirely and Lauer fails to establish any relevant similarities. As BLF explains, Lauer's was a laborious and contentious dispute, and BLF appears to have minimized its hours where possible. (Dkt. No. 72 at 2–13.)

Lauer's expert, Claire Condon, does cite to several examples of BLF's alleged

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RPC 1.5(a).

[2] Blankenship attests that this is the first client who has ever disputed BLF's fee. (Dkt. No. 72 at 15.)

inefficiency. (Dkt. No. 99-3 at 4–5.) But because BLF represented Lauer on a contingent basis, it had every incentive to keep its hours low. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ("It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees."); *see also* RPC 1.5(a)(8). Condon also argues that BLF is attempting to be compensated for non-legal clerical work, but she points to no specific examples. (Dkt. No. 99-3 at 1.) Instead, she asks the Court to assume that because BLF may have billed for non-legal clerical work in *Conti*, they did so here as well. The Court refuses to make such an assumption. In addition, Condon is incorrect in her argument that BLF billed for nearly all of the hours it spent on the case; in fact, it reduced Lauer's bill by approximately [redacted]. (Dkt. No. 75 at 4, 6.)

The RPC 1.5(a) factors support BLF's requested fee. BLF achieved an excellent result for Lauer despite the difficulties that this case presented. RPC 1.5(a)(4). Lauer's wage loss was low, and she had multiple potentially grave credibility issues. (Dkt. No. 75 at 2–3.) After BLF's fee is subtracted, Lauer's settlement will leave her with over [redacted] (inclusive of costs)—[redacted][3]

The clear terms of BLF's Fee Agreement also support the reasonableness of its fee. RPC 1.5(a)(9). In its very first provision, BLF's Fee Agreement gives it the right to choose between charging 40% of a settlement or its total fees incurred—"whichever amount is greater." (Dkt. No. 72-1 at 5.) Blankenship testifies that he explicitly discussed this provision with Lauer and encouraged her to review the Fee Agreement. (Dkt. No. 72 at 3–4.) Lauer provides no authority for her argument that BLF should only have been able to charge 40% of the settlement because that is what Lauer assumed BLF would do. Given the clarity of the Fee Agreement, Lauer had no basis for such an assumption. *See Yakima Cty. (W. Valley) Fire Prot. Dist. No. 12 v. City of*

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[3] Lauer was aware that under BLF's Fee Agreement, costs would be taken out of the settlement. (Dkt. No. 72-2 at 159–60.)

Yakima, 122 Wash. 2d 371, 389 (1993) (holding that even "[w]here a party has signed a contract without reading it, that party cannot successfully argue that mutual assent was lacking as long as the party was not deprived of the opportunity to read the contract, the contract was 'plain and unambiguous', the party was capable of understanding the contract, and no fraud, deceit, or coercion occurred"). Lauer also argues that BLF was remiss in not providing her fee statements during the course of the litigation. But she never claims to have requested these statements, and provides no authority for her argument that BLF needed to provide them without a request.

BLF also moves for [redacted] in costs. (Dkt. No. 89 at 44.) Lauer does not specifically contest any of these costs. Condon argues that BLF should not be reimbursed for the costs of its working lunches and legal messenger services. But these costs are reasonable and therefore compensable. *Blair v. Washington State Univ.*, 108 Wash. 2d 558, 573, (1987).[4] Condon also argues that BLF overcharged for mediation, but provides no evidence in support of this allegation.

The Court therefore approves BLF's requested fees and costs.

B. The Fee Agreement Is Enforceable and BLF Has Not Violated the RPC

In addition to arguing that BLF's fees and costs are unreasonable, Lauer also argues that the Fee Agreement is unenforceable and that both it and BLF itself have violated the RPC. But Lauer's arguments are weak and largely unsupported, and each of them fails.

Lauer first argues that because BLF's Fee Agreement entitles it to choose between a percentage and an hourly rate, it constitutes an unenforceable "fee surprise." Lauer points to an Alaskan state court case that found a supposedly similar fee agreement unenforceable. *Compton v. Kittleson*, 171 P.3d 172 (Ak. 2007). But the fee agreement in that case not only entitled the

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[4] Although *Blair* is a fee-shifting case and here Lauer will be paying BLF's fee, the cases are comparable. The statutes under which Lauer filed suit provide for fee shifting, 42 U.S.C. § 1988(b); RCW 49.60.030(2), and the settlement agreement explicitly included attorney fees and costs. (Dkt. No. 90 at 2.)

attorney to collect the client's entire settlement amount, it also required the client to pay additional fees because the settlement did not cover all of the fees the attorney had accrued. *Id.* at 179. In other words, the client was left with "*less than* nothing." *Id.* Here, BLF's Fee Agreement would, at most, entitle it to the amount of the settlement (although, of course, that is not what occurred). *Compton* is therefore entirely distinguishable. Moreover, the Washington State Bar Association Office of Disciplinary Counsel has already found a nearly identical fee agreement to be permissible. (Dkt. No. 72-1 at 13.)

Lauer next argues that because the Fee Agreement allows BLF to charge a client for its hours billed, it violates the prohibition against taking a proprietary interest in a cause of action. RPC 1.8(i). But as BLF points out, this alleged conflict of interest is present in every contingent fee case. Lauer argues that BLF's Fee Agreement would entitle it to "take the entirety of Lauer's recovery," but this argument is irrelevant because nothing of the sort occurred here.[5]

Lauer then argues that other provisions of the Fee Agreement violate the RPC. Paragraph 7 of the Agreement provides that if a client rejects a settlement offer that BLF believes it should have accepted, BLF may charge the client for its fees and costs regardless of the case's outcome. (Dkt. No. 72-1 at 7.) Paragraph 8 provides that if BLF is discharged or forced to withdraw due to certain failures by the client, BLF may still charge the client for its fees and costs. (*Id.*) But regardless of whether these provisions are permissible, they were not implicated in this case and are severable. (*Id.* at 8.) In her declaration, Lauer states that Blankenship threatened her with Paragraph 7 in attempting to convince her to accept the mediator's offer. (Dkt. No. 98 at 7.) But Lauer never once made this allegation in any of her previous emails to BLF, and never once

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[5] Lauer argues that had she accepted the $150,000 offer of judgment, her award—minus attorney fees and costs—would have been greater than what she received from the settlement, and that BLF's Fee Agreement incentivized it to persuade her to reject this offer. But Lauer's math appears to be incorrect. Even assuming that BLF charged her only 40% of the judgment rather than its hours billed—which it did not need to do—Lauer would have earned [redacted] after fees and costs, rather than [redacted]. (Dkt. No. 102-1 at 25.)

indicated that she didn't want to accept the settlement offer. Her only concern was the amount of attorney fees she would have to pay. (Dkt. No. 72-2 at 214–15) ("This does not mean I am not interested in the settlement. The question is will you negotiate fees before I sign?"). And as noted above, after Blankenship initially informed Lauer that Longevity had accepted the mediator's offer, she seemed pleased and grateful for BLF's efforts. (Dkt. No. 72-2 at 193.) Nor in Blankenship's emails did he ever threaten her with Paragraph 7 or 8; rather, he repeatedly told her that they could discuss attorney fees after she agreed to the settlement. (*E.g.* Dkt. No. 72-2 at 197.) Lauer argues that these statements were "deceitful" in violation of RPC 8.4 because Blankenship subsequently refused to have this discussion. But the emails indicate that although Blankenship attempted to speak with Lauer about the fees, she did not return any of his calls. (Dkt. No. 72-2 at 227, 229.)

Finally, Lauer argues that BLF's actions violated RPC 1.3, 1.5, and 8.4. (Dkt. No. 97 at 18). Lauer provides no authority for these arguments and the Court finds them exceptionally unpersuasive. First, Lauer argues that BLF violated RPC 8.4 by failing to inform her of the statute of limitations on her fee dispute and then delaying litigation so that the clock would run down. But BLF has been nothing but diligent in attempting to resolve this dispute and there is no evidence that it has waited for the statute of limitations to expire. (Dkt. No. 72-2 at 196–236.) Second, Lauer argues that BLF violated RPC 1.5 by unilaterally reimbursing its costs out of the settlement. But it did so only after asking Lauer if she contested the costs and informing her that if she did not, it would withdraw them. (Dkt. No. 88 at 3.) BLF placed the costs in trust once Lauer actually contested them, and has reimbursed those costs that were taken in error. (Dkt. No. 102-1 at 25–27.) Third, Lauer argues that BLF violated RPC 1.3 by failing to "work up" and diligently prosecute the case. There is no evidence in support of this accusation.[6]

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[6] The Court notes that Lauer's counsel has used especially inflammatory rhetoric in its briefing, such as suggesting that BLF's attorneys might be subject to disbarment. (Dkt. No. 97 at 17 n.20.) Lauer's counsel's accusations of mendacity and abuse are uniformly extreme and patently

The Court therefore finds that BLF's Fee Agreement is enforceable and that neither it nor BLF's actions violated the RPC.

III. CONCLUSION

For the foregoing reasons, BLF's motion to enforce its fee agreement (Dkt. No. 71) is GRANTED. BLF is entitled to its fee of [redacted] and costs of [redacted], for a total of [redacted].

BLF's motion to seal (Dkt. No. 73) is also GRANTED. Because all currently sealed documents in this matter contain confidential information, they shall remain under seal.

DATED this 31st day of March 2016.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

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unfounded, which reflects poorly on the accusers—attorneys who, quite frankly, should know better.